IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6576 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COLLECTOR & 1 - Petitioner(s)
Versus
RAMESHBHAI JOITARAM PATEL & 1 - Respondent(s)

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Appearance :
MR SATYAM CHHAYA, ASSTT.GOVERNMENT PLEADER for Petitioner(s) : 1 - 2.
MR NR JOSHI for MR IM BENGALI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/05/2007

ORAL JUDGMENT

1. Shri Satyam Chhaya, learned AGP for the State, Shri N.R. Joshi, learned counsel under the authority of Shri I.M.Bengali, learned counsel

for respondents no. 1 and 2.

2. The short facts necessary for disposal of the present writ application are that Mamlatdar, after receiving information that certain agricultural land belonging to one Ramsingji Dhulaji was illegally transferred in favour of the respondents Rameshbhai Patel and Shakriben, wife of Prahladbhai Patel, commenced proceedings under Section 84-C of the Bombay Tenancy & Agricultural Lands Act, 1948. Appropriate notices were issued and and the parties were given opportunity to lead evidence. After recoding evidence and hearing the parties, the Mamlatdar held that the respondents Rameshbhai Patel and Shakriben Patel, not being agriculturists, were not entitled to purchase the land, he accordingly directed vesting of the land in the State Government. The present respondents challenged the said order before the Deputy Collector, who in turn, dismissed the appeal. The matter was taken to the Gujarat Revenue Tribunal. The Tribunal, in its turn, allowed the revision and remanded the matter

back to the Mamlatdar for consideration afresh. The Mamlatdar, after providing an opportunity of hearing to the parties, again held against the interest of the present respondents. The order was again taken up in appeal, in the appeal, an application for stay was filed. But the Deputy Collector refused to exercise discretion in favour of the respondents and rejected the application. The order rejecting the prayer for grant of stay was, then, challenged before the Gujarat Revenue Tribunal. It appears that in the meanwhile, the learned Collector relied upon the order passed by the Mamlatdar and non-grant of stay by the Deputy Collector and after taking into consideration that possession of the land was already taken, allotted the land in favour of the petitioner no.2, that is, Executive Engineer, National Highway Division, Gandhinagar, for construction/development of the road. The said order was also challenged by the present respondents before the Gujarat Revenue Tribunal.

3. The Tribunal granted interim stay in favour of

the present respondents, the said order came to be challenged in Special Civil Application No. 6577 of 1995. However, the said writ application came to be dismissed on 20.9.96 as infructuous.

4. In the final order passed by the Gujarat Revenue Tribunal, the Tribunal set aside the order passed by the Collector transferring the land in favour of the petitioner no.2 on the ground that possession was not properly taken and as the said proceedings were pending consideration, the land could not be allotted in favour of the petitioner no.2. The Tribunal also observed that the land vesting in the State Government could not be allotted in favour of the petitioner no.2, but could only be disposed of in accordance with the provisions of the Bombay Land Revenue Code. In relation to non-grant of stay by the Deputy Collector, the Tribunal allowed the revision, directed that status-quo be maintained till final disposal of the appeal pending before the Deputy Collector. He accordingly directed the Deputy Collector to dispose of the appeal in accordance with law

within a period of two months from the date of the receipt of the order impugned.

5. Shri Joshi, learned counsel for the respondents submits that during pendency of these proceedings, the land in dispute has been acquired by the State Government under Section 4/6 of the Land Acquisition Act, possession has already been taken over by the Government and compensation has already been paid to the respondents, therefore, this petition has become infructuous.

6. After hearing the learned counsel for the parties, I take up the objection raised by Shri Joshi. Acquisition of the land treating it to be property of the present respondents would not make these proceedings infructuous, because, if the Deputy Collector had held that the land rightly vested in the government, then, the property would not belong to the petitioners and if the land vested in the government, then, there would be no need to acquire the land or to pay compensation under the Land Acquisition Act. The land belonging to and owned by a particular

person can only be acquired. Where the land belongs to the State Government, then, the same cannot be acquired by the State, because, one cannot acquire his own property under the provisions of the Land Acquisition Act. The acquisition proceedings and payment of compensation certainly would be subject to the final outcome of the appeal which was pending consideration before the Deputy Collector. I reject the preliminary objection raised by Shri Joshi.

7. So far as the grant of stay by the Tribunal is concerned, this Court must hold that in a case where appeal is admitted for hearing and dispossession is not stayed, the dispossession is likely to create many complications. In the present case, non-grant of stay in fact, had created many complications, because, the Collector allotted the land in favour of the petitioner no.2. If the appellant or revisional court, in exercise of their discretion stayed the execution and operation of particular order, then, the High Court, in its jurisdiction under

Article 227 of the Constitution of India would not interfere.

8. In the opinion of this Court, the order passed by the Collector, allotting the land in favour of the petitioner no.2 was rightly quashed by the Tribunal, the land had not vested in the State Government free from all encumbrances. The matter was sub judice and even if an order of stay was not granted in favour of the respondent, the Collector could not step outside his authority and allot the land in favour of third parties. Assuming the Collector's order is taken to be right, then, what would be the scenario in case appeal filed by the purchaser is allowed and it is held that the land would not vest in the government.

9. Taking into consideration the totality of the circumstances, I hold that the petitioner-State has not made out a case for any interference. The petition deserves to and is accordingly dismissed.

10. It is however, made clear that the parties would be governed by the final judgment in the

appeal which was pending before the Deputy Collector, Land Reforms. If the appeal has already been disposed of and the matter has reached to its final conclusion, then, the parties would be governed by the final determination in the matter. The petition stands dismissed with the clarification above. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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